Supreme Court, U.S.
FILED
DEC 13 2002
CLERK

No. 02-743

In the

Supreme Court of the United States

DAVID McMAHON,

Petitioner,

v.

ALBANY UNIFIED SCHOOL DISTRICT, JOE DALE HUDSON, ALAN RIFFER, DIANNE McNENNY, MARSHA SKINNER, and PEGGY THOMSEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

RESPONDENTS' BRIEF IN OPPOSITION

Terry G. Tadlock
Counsel of Record
Imai, Tadlock,
Keeney & Cordery, LLP
185 Berry Street
Suite 4300
San Francisco, CA 94107
(415) 537-3930
Attorneys for Respondents

CURRY & TAYLOR ♦ (202) 393-4141 ♦ HTTP://USSCINFO.COM

PARTIES TO THE PROCEEDINGS

The Albany Unified School District is a public entity operating in the City of Albany, County of Alameda, State of California. Respondents Alan Riffer, Dianne McNenny, Marsha Skinner and Peggy Thomsen were publicly elected members of the governing board of the Albany Unified School District. Respondent J. Dale Hudson, the then Superintendent of Schools, was an employee of the Albany Unified School District.

In addition to the parties listed by Petitioner, one additional party warrants mention. Edward McManus was also a publicly elected member of the governing board of the Albany Unified School District and a defendant in the trial court proceedings below. McManus was granted a non-suit by the trial court with judgment entered thereon. Petitioner did not appeal the judgment entered in favor of McManus. Accordingly, the petition does not raise any issue with respect to McManus and he is properly omitted from the list of respondents.

TABLE OF CONTENTS

PARTIES TO THE PROCEEDINGS i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

REASONS FOR DENYING THE WRIT 1

CONCLUSION 5

TABLE OF AUTHORITIES

CASES

GALANTY V. PAUL REVERE LIFE INSURANCE COMPANY (200) 23 CAL. 4TH 368, 374 2

GUZ V. BECHTEL NATIONAL, INC., (2000) 24 CAL.4TH 317, 334 2

PAZ V. STATE OF CALIFORNIA (2000) 22 CAL. 4TH 550, 557 2

STATUTES

CALIFORNIA PENAL CODE SECTION 403 4

REASONS FOR DENYING THE WRIT

Petitioner asserts the Court of Appeal decided his case on the basis of an issue not briefed or argued by the parties, without first giving notice and opportunity to brief the issue. This is an erroneous presentation of the facts. The primary question presented by the petition ignores the standard of review applied by the California Court of Appeal in its review of the trial court decision granting Respondents motion for summary judgment.

Petitioner's appeal from the trial court's decision granting the motion for summary judgment correctly identified the standard of review as being de novo. The California Court of Appeal reviewed the evidence de novo and was not, as Petitioner now claims, restricted to the issues identified by Petitioner in his appellate brief. Accordingly, the decision of the California Court of Appeal was proper in all respects and Respondents urge this Honorable Court to deny the Petition for Writ of Certiorari.

I
THE APPLICABLE STANDARD IS DE NOVO REVIEW OF THE EVIDENCE BY THE COURT OF APPEAL

The trial court granted summary judgment in favor of Respondents. Petitioner appealed to the California Court of Appeal. The Court of Appeal affirmed the trial court decision. (Petition for Writ of Certiorari, Appendix 1 - 11)

In his brief filed with the Court of Appeal Petitioner identified the standard of review as follows: "The granting or denial for a motion of summary

judgment is subject de novo review. (Paz v. State of California (2000) 22 Cal. 4th 550, 557) The Appellate Court reviews the moving papers independently to determine whether there is a triable issue as to a material fact and whether the moving party is entitled to judgment as a matter of law. (Galanty v. Paul Revere Life Insurance Company (200) 23 Cal. 4th 368, 374.)" (Appellant's Brief, page 9)

More precisely, in Paz v. State of California, (2000) 22 Cal. 4th 550, 557, the California Supreme Court held that on review of a trial court decision granting a motion for summary judgment "We review the trial court's decision de novo, *considering all of the evidence the parties offered in support of and against the motion*, and the uncontradicted inferences reasonably deducible from the evidence, except that to which the court sustained objections." (Emphasis added)

In the instant case, the Court of Appeal followed the instruction of the California Supreme Court and reviewed the trial court's decision granting summary judgment de novo. The Court of Appeal said "Although not addressed by the court in its order, the issue of probable cause furnishes a separate and independent ground for affirmance. *The issue was argued by defendants below.* Relevant evidence produced by the parties is not in dispute, and therefore, ***our review is de novo***." (Petition for Writ of Certiorari, Appendix 6) (Emphasis added) In support of its position, the Court of Appeal cited Guz v. Bechtel National, Inc., (2000) 24 Cal.4th 317, 334; 8 Pacific 3rd 1089, 1099 which provides "On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all of the evidence set forth in the moving and opposition papers except that to which objection has been made and sustained".

Accordingly, review by the California Court of Appeal in the instant case was not limited to issues briefed or argued by the parties on appeal; rather, it was incumbent upon the court to review de novo the moving and opposition papers and independently consider all of the evidence the parties offered in support of and against the motion. The Court of Appeal did exactly this in affirming the decision of the trial court.

II
STATEMENT OF FACTS

A regularly scheduled Albany Unified School District Board of Education meeting was held on the evening of April 30, 1996. The meeting was conducted in the multi-purpose/cafeteria room located at Cornell Elementary School. Over a period of two weeks prior to this meeting Petitioner collected trash and garbage, including alcohol bottles and drug paraphernalia, in 13 gallon plastic bags. He bought at approximately five such bags of this trash to the meeting of the Board of Education.

At the meeting, Petitioner sought to address the Board of Education on issues not on the agenda, including earthquake safety, traffic and trash. Over protest by the site administrator/principal and at least one member of the board, Petitioner emptied the contents of at least one 13 gallon trash bag partially onto a tarp and on to the floor of the cafeteria in front of the members of the board. Petitioner admitted this trash contained alcohol bottles and drug paraphernalia. Petitioner wore at least one glove when he handled and dumped out the trash onto the floor at the April 30, 1996 meeting.

The board members concluded Petitioner's conduct in dumping the trash on to the floor caused a serious disruption of the meeting. Former defendant and board member McManus felt the meeting was out of control and Petitioner's conduct concurrently posed a safety threat to those present at the meeting and the children who would attend the school and eat in the building the next day. The Board adjourned and recessed the meeting until order could be restored. Former Superintendent Hudson summoned the police.

Petitioner continued to speak to those persons present until the police arrived. When the police officers arrived one officer informed former Superintendent Hudson if he (Hudson) wished to have the Petitioner removed from the room it would be necessary to place him under citizen's arrest. Former Superintendent Hudson agreed to do so and signed a citizen's complaint form presented to him by an Albany police officer indicating that former Superintendent Hudson was arresting Petitioner for a violation of California Penal Code Section 403, disturbing a public meeting.

After the Petitioner was escorted from the building, the meeting resumed and continued without incident.

Petitioner thereafter filed a verified amended complaint on March 9, 1999 alleging false arrest, malicious prosecution, violation of constitutional rights, and requesting declaratory relief. The Albany Unified School District, Hudson, Riffer, McNenny, Skinner, Thomsen and McManus answered and thereafter sought summary judgment and/or summary adjudication of issues. The trial court granted summary judgment in favor of Riffer, McNenney, Skinner and Thomsen as to all causes of action/counts and granted summary

adjudication of issues in favor of the Albany Unified School District, Hudson and McManus on all causes of action/counts except that for false arrest.

Petitioner thereafter proceeded to trial against the Albany Unified School District, Hudson and McManus during which McManus, on motion, was granted a judgment of nonsuit. The trial continued against the Albany Unified School District and former Superintendent Hudson until the jury failed to reach a verdict. Following declaration of a mistrial, a new trial date was scheduled. Appellant then proceeded with the second trial against only the Albany Unified School District and former Superintendent Hudson. That trial ended with a jury verdict in favor of the Albany Unified School District and former Superintendent Hudson.

Appellant appealed from the summary judgment in favor of Riffer, McNenny, Skinner and Thomsen. The Court of Appeal affirmed the trail court decision. The California Supreme Court then denied both Petitioner's petition for a writ of mandamus and petition for review. Each of these decisions appear in the Appendices to the Petition for Writ of Certiorari.

II
CONCLUSION

Petitioner appealed the trial court's decision granting Respondents motion for summary judgment. In doing so, Petitioner correctly identified the standard of review by the California Court of Appeal as one of de novo review of the evidence. The Court of Appeal reviewed the evidence de novo and affirmed the trial court's judgment. Thereafter, Petitioner unsuccessfully sought relief from the California Supreme Court. Petitioner now seeks to apply a different spin to the

issue and asks this court to ignore the standard of de novo review that has been long standing and repeatedly articulated by California courts. For all of the reasons herein stated, Respondents respectfully request that this Honorable Court deny this petition.

Respectfully submitted,

T.G. Tadlock
Counsel of Record
Imai, Tadlock, Keeney & Cordery, LLP
185 Berry Street
San Francisco, CA 94107
(415) 537-3930
Attorneys for Respondents